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Justice awaits 'good test case' on security law

By Ed Rogers
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The Justice Department is waiting for "a good test case" before prosecuting a newspaper or broadcaster under a 1950 law that protects national security information, The Washington Times has learned.

There has been speculation that the Justice Department had rejected CIA Director William Casey's recent requests for media prosecutions, but sources insisted to The Times that the department is reviewing an array of media cases for possible criminal prosecution.

Mr. Casey announced last week that he had asked the Justice Department to consider prosecuting NBC News for its report of technical details about communications intelligence-gathering that accused spy Ronald W. Pelton is charged with having sold to the Soviets.

The CIA also is reviewing a story in which The Washington Post reported that the suspect had compromised a sophisticated electronic eavesdropping operation in Soviet ports by U.S. submarines, it was announced last week.

There have been many cases in which national security interests have been damaged by publication of leaked classified material, Mr. Casey told the American Society of Newspaper Editors last month.

These leaks, he said, have damaged "every method we have of acquiring intelligence, our agents, our

relationship with friendly intelligence and security services around the world, our photographic and electronic capabilities, the information we get from communications."

A 1950 law prohibits revealing or publishing classified information concerning U.S. communications intelligence activities. But that law has never been used to prosecute a news organization.

In reviewing the media cases at Mr. Casey's request, the Justice Department is merely following the rule book, The Times was told. The department is required to enforce the law, but has, in legal terms, "prosecutorial discretion."

This discretion means that any case, first of all, must be "winnable." If it is a test case, it must also be one that will produce court rulings that would be useful in future cases.

All trials result in judicial "case law" that serves as a precedent when similar cases are tried later.

"Good cases make good case law," a prosecutor's maxim says.

Other sources noted, however, that the government could, under the guise of seeking only an air-tight case, be seeking a graceful way of making Mr. Casey's threat moot.

The department also is reviewing more traditional cases involving accused leakers to determine whether they should be prosecuted under criminal law. Two of the cases involve mid-level administration officials who were fired recently.

Michael E. Pillsbury, a Defense Department official, was fired after an investigation of a leak to reporters about U.S. weapons intended for anti-communist resistance forces in Angola and Afghanistan.

Spencer C. Warren, a State Department speech writer, was fired after department officials said he

admitted leaking to reporters a diplomatic cable charging House Speaker Thomas P. O'Neill Jr. with attempting to undermine President Reagan's policy toward Nicaragua.

Mr. Reagan warned in 1983 that he would take administrative action against leakers of classified information and, "where circumstances warrant," refer them for criminal prosecution.

High administration officials are

now preparing for a White House meeting to consider additional ways to deal with the epidemic of classified information leaks, according to published accounts.

"A number of papers were prepared in preparation for a senior-level meeting, which has not yet taken place," an administration official told the Associated Press. He spoke on condition that he not be identified.

"The papers were meant as an effort to provide background material for the principals who would attend the meeting, as well as to solicit ideas for better ways to protect classified information whose dissemination could possibly be injurious to national security," the official said.

According to another report, one proposal would create an FBI task force to investigate the leaks. But the Justice Department does not believe that is necessary since trained agents are always available, a source said.

Senior officials, including Mr. Casey, Secretary of State George P. Shultz and Defense Secretary Caspar W. Weinberger, are known to have met about 10 days ago to discuss the leak problem. They did not reach any decisions.